

Federal Reserve System

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a multiplier that is equal to the inverse of the subsidiary's total risk-based capital ratio minus one; minus

(C) Total consolidated regulatory capital of the subsidiary; plus

(iii) The total consolidated assets of each top-tier U.S. subsidiary that is not subject to applicable risk-based capital rules and does not report information regarding its capital under risk-based capital rules applicable to bank holding companies, calculated in accordance with applicable accounting standards.

(2) *Foreign financial company that is not a foreign banking organization.* For a foreign company that is not a foreign banking organization, U.S. liabilities are equal to:

(i) The total consolidated liabilities of each top-tier U.S. subsidiary that is subject to applicable risk-based capital rules (or reports information to the Board regarding its capital under risk-based capital rules applicable to bank holding companies), calculated as:

(A) Total consolidated risk-weighted assets of the subsidiary; plus

(B) The amount of assets that are deducted from the subsidiary's regulatory capital elements under the applicable risk-based capital rules, times a multiplier that is equal to the inverse of the company's total risk-based capital ratio minus one; minus

(C) Total regulatory capital of the subsidiary; plus

(ii) The total consolidated liabilities of each top-tier U.S. subsidiary that is not subject to applicable risk-based capital rules, calculated in accordance with applicable accounting standards.

(3) *Intercompany balances and transactions*—(i) *Foreign banking organization.* A foreign banking organization must reduce the amount of consolidated liabilities of its U.S. operations calculated pursuant to this paragraph (d) by amounts corresponding to intercompany balances and intercompany transactions between the foreign banking organization's U.S. domiciled affiliates, branches or agencies to the extent such items are not eliminated in consolidation, and increase consolidated liabilities by net intercompany balances and intercompany transactions between a non-U.S. domiciled affiliate and a U.S. domiciled affiliate,

branch, or agency of the foreign banking organization, to the extent such items are not reflected in the measure of liabilities.

(ii) *Foreign financial company.* A foreign company that is not a foreign banking organization may reduce the amount of consolidated liabilities of its U.S. operations calculated pursuant to this paragraph (d) by amounts corresponding to intercompany balances and intercompany transactions between the foreign organization's U.S. domiciled affiliates to the extent such items are not already eliminated in consolidation; provided that it increases consolidated liabilities by net intercompany balances and intercompany transactions between a non-U.S. domiciled affiliate and a U.S. domiciled affiliate, to the extent such items are not already reflected in the measure of liabilities.

(e) *Applicable accounting standard.* If a company does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may submit a request to the Board that the company use an accounting standard or method of estimation other than GAAP to calculate its liabilities for purposes of this part. The Board may, in its discretion and subject to Board review and adjustment, permit the company to provide estimated total consolidated liabilities on an annual basis using this accounting standard or method of estimation.

§ 251.4 Exceptions to the concentration limit.

(a) *General.* With the prior written consent of the Board, the concentration limit under § 251.3 shall not apply to:

(1) A covered acquisition of an insured depository institution that is in default or in danger of default (as determined by the appropriate Federal banking agency of the insured depository institution, in consultation with the Board);

(2) A covered acquisition with respect to which assistance is provided by the Federal Deposit Insurance Corporation

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under section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)); or

(3) A covered acquisition that would result in an increase in the liabilities of the financial company that does not exceed \$2 billion, when aggregated with all other acquisitions by the financial company made pursuant to this paragraph (a)(3) during the twelve months preceding the projected date of the acquisition.

(b) *Prior written consent*—(1) *General*. Except as provided in paragraph (c) of this section, a financial company must request that the Board provide prior written consent before the financial company consummates a transaction described in paragraph (a) of this section.

(2) *Contents of request*. (i) A request for prior written consent under paragraph (a) of this section must contain:

(A) A description of the covered acquisition;

(B) The projected increase in the company's liabilities resulting from the acquisition;

(C) If the request is made pursuant to paragraph (a)(3) of this section, the projected aggregate increase in the company's liabilities from acquisitions during the twelve months preceding the projected date of the acquisition; and

(D) Any additional information requested by the Board.

(ii) A financial company may satisfy the requirements of this paragraph (b) if:

(A) The proposed transaction otherwise requires approval by, or prior notice to, the Board under the Change in Bank Control Act, Bank Holding Company Act, Home Owners' Loan Act, International Banking Act, or any other applicable statute, and any regulation thereunder; and

(B) The financial company includes the information required in paragraph (b)(2) of this section in the notice or request for prior approval described in paragraph (b)(2)(i)(A) of this section.

(3) *Procedures for providing written consent*. (i) The Board will act on a request for prior written consent filed under this paragraph (b) within 90 calendar days after the receipt of a complete request, unless that time period

is extended by the Board. To the extent that a proposed transaction otherwise requires approval from, or prior notice to, the Board under another provision of law, the Board will act on that request for prior written consent concurrently with its action on the request for approval or notice.

(ii) In acting on a request under this paragraph (b), the Board will consider whether the consummation of the covered acquisition could pose a threat to financial stability.

(c) *General consent*. The Board grants prior written consent for a covered acquisition that would result in an increase in the liabilities of the financial company that does not exceed \$100 million, when aggregated with all other covered acquisitions by the financial company made pursuant to this paragraph (c) during the twelve months preceding the date of the acquisition. A financial company that relies on prior written consent pursuant to this paragraph (c) must provide a notice to the Board within 10 days after consummating the covered acquisition that describes the covered acquisition, the increase in the company's liabilities resulting from the acquisition, and the aggregate increase in the company's liabilities from covered acquisitions during the twelve months preceding the date of the acquisition.

§ 251.5 No evasion.

A financial company may not organize or operate its business or structure any acquisition of or merger or consolidation with another company in such a manner that results in evasion of the concentration limit established by section 14 of the Bank Holding Company Act or this part.

§ 251.6 Reporting requirements.

By March 31 of each year:

(a) A U.S. financial company (other than a U.S. financial company that is required to file the Bank Consolidated Reports of Condition and Income (Call Report), the Consolidated Financial Statements for Holding Companies (FR Y-9C), the Parent Company Only Financial Statements for Small Holding Companies (FR Y-9SP), or the Parent Company Only Financial Statements for Large Holding Companies (FR Y-